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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,046	08/01/2003	Thomas J. Wheeler	OLYM/0093	4714

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EXAMINER

SALDANO, LISA M

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 01/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/633,046

Applicant(s)

WHEELER ET AL.

Examiner

Lisa M. Saldano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-22, 24-30, 36, 37 and 39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-9, 14-22, 25-29, 36, 37 and 39 is/are rejected.
- 7) ☒ Claim(s) 11-13, 24 and 30 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 8, 9 and 22 recites the limitations directed to "the joint." Prior claim language from which these limitations depend fail to mention a joint. There is insufficient antecedent basis for this limitation in the claim.

For purposes of prior art examination, the claim has been interpreted as best understood.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-5, 18-20, 36-37 and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by Mazon (5,507,051).

Regarding claims 1-5, 18-20, 36, 37 and 39, Mazon discloses a prospector tool 10 that is **fully capable** of being used as a tamping tool. Mazon discloses a prospector tool 10 comprising a shovel handle 12 and a collar or locking sleeve 22 that is adjustably coupled with locking threads 20. The prospector tool has a pivotable extending arm or housing member 34 that couples with a first end 14 of the shovel handle 12 and the locking sleeve 22 thereof. The

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pivotable extending arm 34 serves to position the shovel 26 at different angles. Fig.3 illustrates the shovel portion in the upper position or storage position wherein the longitudinal axis of the handle is oriented substantially parallel to lower surface of the shovel. Fig.1 shows that the housing member 34 has at least two clamping surfaces that are matable with the collar to retain the handle in first, second or third positions.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-9, 15, 16, 18-22 and 25-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over McNamara (3,739,562) in view of Mazon (5,507,051).

McNamara discloses a garden tool 10 that is a combination rake, hoe and tamping device wherein the tool consists of a handle attached to a tool by means of an angularly adjustable joint (see column 1, lines 1-15 and Figs.1-5). The adjustable joint permits the locking of the tool surface at any desired angle to the handle to permit use of either the rake or hoe edges or to lock the tool surface at a right angle to the handle so that the device may be used as a tamping tool. The tool comprises an elongated handle 11 having a collar attached to the distal end of the handle, it is located between the handle 11 and the rotatable joint assembly 20 (see Fig.3). A flat tool member 15 functions as a tamping base having an upper and lower surface. The rotatable joint assembly 20 functions as a housing member that is disposed on the upper surface of the flat

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tool member 15. The rotatable joint assembly comprises a plurality of clamping surfaces 21,22 and a joint formed by screw 26 and female threads 23 that pivotally receives the elongated handle via the collar.

However, McNamara fails to disclose that the tool has two clamping surfaces formed 90-degrees apart being matable with the collar.

Mazon discloses a prospector tool 10 for earth-working comprising a shovel handle 12 and a collar or locking sleeve 22 that is adjustably coupled with locking threads 20. The prospector tool has a pivotable extending arm or housing member 34 that couples with a first end 14 of the shovel handle 12 and mates with the locking sleeve 22. The collar or locking sleeve 22 can mate with at least two clamping surfaces on the pivotable extending arm or housing member 34 (see Fig.1). Two of the clamping surfaces are formed 90 degrees apart (see Fig.1). The pivotable extending arm 34 serves to position the shovel 26 at different angles. Fig.3 illustrates the shovel portion in the upper position or storage position wherein the longitudinal axis of the handle is oriented substantially parallel to lower surface of the shovel.

Regarding claims 9 and 22, Mazon discloses the prospector tool wherein the handle comprises an extension with a slot formed at a distal end (see Figs.4&5) for receiving a pivot bolt and for camming the handle against an inner wall of housing member 34.

Regarding claim 15, Mazon discloses the prospector tool wherein the handle comprises two-part construction (see Fig.5). Mazon further discloses that the parts of the invention may include variations in material (see column 5, lines 37-45). Mazon further discloses that a portion of the handle may be made from a non-slip material for use in hot weather when a user's hands may become sweaty (see column 4, lines 5-10).

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Regarding claim 16, Mazon discloses the prospector tool wherein the handle comprises two-part construction (see Fig.5) and a first member of the handle is disposed adjacent housing member 34 and comprises a threaded portion 20 that adjustably couples to collar or locking sleeve 22.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of McNamara to comprise the collar and housing configuration with clamping surfaces located 90 degree apart, as suggested by Mazon, because McNamara clearly discloses the desire and usefulness of having an earth-working tool with a handle that can be oriented at various angles relative to a more planar portion of the earth-working tool. It would have been obvious to substitute the housing of Mazon with the rotatable joint of McNamara in situations whereby only three orientations are necessary thereby satisfying the function of having a variably oriented handle.

Although McNamara fails to explicitly disclose that the tool may be locked at a storage position comprising the longitudinal axis of the handle oriented substantially parallel to the lower surface of the tamping base, it would be obvious to one of ordinary skill in the art to orient the handle parallel to the tamping surface because the device's joint is designed to accommodate that condition and such a condition would allow the device to be stored at a location using a little space as possible. Mazon teaches and illustrates this storage position in the position of the shovel portion 26.

Furthermore, it would have been obvious to one of ordinary skill in the art to modify the rotatable joint assembly 20 of McNamara with the threadably attached collar taught by Mazon because it provides another means to adjustably lock the planar portion of the device relative to

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the handle. The tools are analogous art because they generally represent tools for removal or manipulation of earth and earthen structures. Moreover, they each provide a base that is angularly adjustable relative to a handle. Moreover, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide different materials for different parts of the device, as taught by Mazon, because different materials provide greater value in certain functions, such as non-slip material suggested by Mazon.

7. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over McNamara in view of Mazon, as applied to claim 1 above, in further view of Bator (2,994,262).

McNamara and Mazon disclose features as disclosed above. Specifically, McNamara discloses a garden tool 10 that is a combination rake, hoe and tamping device wherein the tool consists of a handle attached to a tool by means of an angularly adjustable joint (see column 1, lines 1-15 and Figs.1-5).

However, McNamara and Mazon fail to explicitly disclose a plurality of reinforcement members.

Bator discloses a silage packer 16 that functions as a tamping device wherein the packer comprises reinforcing ribs 24.

It would have been obvious to one of ordinary skill in the art to modify the garden tool of McNamara with the reinforcing ribs taught by Bator because the reinforcing ribs enhance the durability of the tool by stiffening it and strengthening it against the impact forces that it may sustain during use in the field.

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8. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over McNamara in view of Mazon, as applied to claim 16, and further in view of Carmien (Re.32,364).

McNamara and Mazon disclose the inventions as described above. Specifically, Mazon discloses the prospector tool wherein the handle comprises two-part construction (see Fig.5). Mazon further discloses that the parts of the invention may include variations in material (see column 5, lines 37-45). Mazon further discloses that a portion of the handle may be made from a non-slip material for use in hot weather when a user's hands may become sweaty (see column 4, lines 5-10).

However, McNamara and Mazon fail to explicitly disclose that the portions of the shovel are made from metal and wood.

Carmien discloses a tool handle for tools such as a shovel or spade 10. Carmien discloses that such tools are comprised of various materials such as a metal, usually steel and wood (see column 1, lines 10-25).

It would have been obvious to one of ordinary skill in the art to incorporate the multiple material teaching of Carmien in the manufacture of the McNamara as modified by Mazon tool because, as Mazon suggests, such tool may be manufactured from various material to optimize the form and function of each part.

Allowable Subject Matter

9. Claims 11-13, 24 and 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

10. Applicant's arguments with respect to the claim have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Specifically, the applicant has amended the independent claims to include matter that was not previously presented, i.e. "...clamping surfaces formed 90 degrees apart..." Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lisa M. Saldano whose telephone number is 703-605-1167. The examiner can normally be reached on Monday-Friday, 8:30am-5:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather C. Shackelford can be reached on 703-308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lms



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